



**UNITED STATES**  
**NUCLEAR REGULATORY COMMISSION**  
REGION I  
2100 RENAISSANCE BOULEVARD, SUITE 100  
KING OF PRUSSIA, PA 19406-2713

November 8, 2021

EA-21-058

Brian Festa  
General Manager  
Empire Paving, Inc.  
30 Bernhard Road  
North Haven, CT 06473

**SUBJECT: EMPIRE PAVING, INC. - NOTICE OF VIOLATION - NRC INSPECTION  
REPORT NO. 03038833/2021001**

Dear Mr. Festa:

This letter provides you the U.S. Nuclear Regulatory Commission's (NRC) enforcement decision for the apparent violations identified during a remote, announced inspection (Inspection Report No. 03038833/2021001) of your activities performed under your NRC license. The purpose of the inspection was to examine Empire Paving, Inc.'s (Empire Paving) licensed activities as they relate to radiation safety, the NRC's regulations, and the conditions in your license. The NRC discussed the apparent violations with you and your staff during an exit meeting on June 28, 2021. The apparent violations were also described in the NRC inspection report sent to you with a letter dated June 30, 2021 (ML21182A056).<sup>1</sup>

In the NRC letter transmitting the inspection report, we requested that Empire Paving address the apparent violations identified in the report by providing a written response before we made our final enforcement decision. We also provided you the opportunity to address the apparent violations by attending a pre-decisional enforcement conference. In a letter dated July 1, 2021, you provided a written response to the apparent violations.

Based on the information developed during the inspection and the information that you provided in your response, the NRC has determined that five violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation (Notice) and was described in detail in the subject inspection report. The violations were related to Empire Paving's failure to: (A) maintain a designated individual to serve as the Radiation Safety Officer (RSO); (B) review the radiation protection program content and implementation; (C) test sealed sources for leakage and/or contamination at the appropriate intervals; (D) conduct physical inventories at the appropriate intervals; and (E) confine possession of licensed material to locations authorized on the NRC license. Specifically, the NRC identified that Empire Paving had been without an Radiation Safety Officer (RSO) for the NRC license since July 10, 2019. The NRC determined that the cause of the violation was due to the prior RSO not effectively maintaining the program and the licensee's failure to request a license amendment to designate a new RSO in a timely manner. The NRC concluded that the violations involving the radiation safety program review,

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<sup>1</sup> Designation in parentheses refers to an Agency-wide Documents Access and Management System (ADAMS) accession number. Unless otherwise noted, documents referenced in this letter are publicly available using the accession number in ADAMS.

gauge leak testing, and inventories were related to a common cause of not having an individual designated to fulfill the duties and responsibilities of the RSO for the license. Therefore, these violations are categorized collectively in accordance with the NRC Enforcement Policy as a Severity Level (SL) III problem.

In addition, the NRC determined that the remaining violation involving licensed byproduct material being stored and used at a location in Stratford Connecticut, a location not authorized on the NRC license, was also due to not effectively maintaining the radiation safety program and Empire Paving not being aware that the RSO did not submit the license amendment for the change of location. The storage and use of licensed material in an unauthorized location is a significant regulatory concern as it impacts the ability of the NRC to properly inspect your operations to ensure you are safely using the radioactive material. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level SL III.

In accordance with NRC Enforcement Policy, a base civil penalty in the amount of \$7,500 is considered for each Severity Level III violation or problem.

With respect to both the SL III problem and the SL III violation, because your facility has not been the subject of escalated enforcement actions within the last two years, the NRC considered whether credit was warranted for Corrective Action in accordance with the civil penalty assessment process described in Section 2.3.4 of the Enforcement Policy. The NRC determined that credit was warranted for your corrective actions. Your immediate corrective actions implemented to prevent recurrence included: (1) submitting license amendments to name the current RSO and identify the location where licensed material will be stored and used, (2) completing a program review, (3) establishing a program to have the gauges tested by a third party, (4) conducting inventories, and (5) revising corporate policies to ensure changes to the radiation safety program are reviewed and documented. The NRC will conduct a follow-up inspection to evaluate implementation of your corrective actions within the next twelve months, in accordance with NRC Inspection Manual Chapter 2800, "Materials Inspection Program."

Therefore, to encourage prompt and comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty. In addition, issuance of the SL III problem and the SL III violation constitute escalated enforcement actions that may subject Empire Paving to increased inspection effort in the future. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>.

The NRC has concluded that information regarding: (1) the reasons for the violations; (2) the actions planned or already taken to correct the violations and prevent recurrence; and (3) the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. 03038833/2021001. Therefore, you are not required to respond to this letter, unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be made available electronically for public inspection in the NRC Public

Document Room and in the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

To the extent possible, your response, if you choose to provide one, should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information.

If you request withholding of such information, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information).

If you have any questions concerning this matter, please contact Christopher Cahill, of my staff at 610-337-5108 or [Christopher.Cahill@nrc.gov](mailto:Christopher.Cahill@nrc.gov).

Sincerely,

David C. Lew  
Regional Administrator

Docket No. 03038833  
License No. 06-35237-01

Enclosure:

1. Notice of Violation

cc w/enclosure: Ryan Hannon,  
Interim Radiation Safety Officer  
State of Connecticut

SUBJECT: EMPIRE PAVING, INC. - NOTICE OF VIOLATION - NRC INSPECTION  
 REPORT NO. 03038833/2021001 DATED NOVEMBER 8, 2021

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**ML21285A042**

DOCUMENT NAME: [https://usnrc-my.sharepoint.com/personal/cxs5\\_nrc\\_gov/Documents/Desktop/Empire Paving Final Action.docx](https://usnrc-my.sharepoint.com/personal/cxs5_nrc_gov/Documents/Desktop/Empire Paving Final Action.docx)

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## NOTICE OF VIOLATION

Empire Paving, Inc.  
North Haven, CT

Docket No. 03038833  
License No. 06-35237-01  
EA-21-058

During a remote, announced NRC inspection conducted on February 26 through April 28, 2021, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. License Condition 12 of NRC License No. 06-35237-01, dated May 28, 2015, authorizes a specific individual to fulfill the duties and responsibilities of the Radiation Safety Officer (RSO) for the license.

Contrary to the above, from July 10, 2019 to March 23, 2021, the individual authorized in Condition 12 of the license did not fulfill the duties and responsibilities of RSO for the license. Specifically, the RSO named on the license left the employment of the licensee in July 2019, and Empire Paving, Inc. did not submit an amendment request to name a new RSO until March 23, 2021.

- B. 10 CFR 20.1101(c) states, in part, that the licensee shall periodically (at least annually) review the radiation protection program content and implementation.

Contrary to the above, since 2018, the licensee had not periodically (at least annually) reviewed the radiation protection program content and implementation.

- C. License Condition 14. A of License 06-35237-01 dated May 28, 2015, requires that sealed sources shall be tested for leakage and/or contamination at intervals not to exceed six months or at the intervals specified in the certificate of registration issued by the U.S. Nuclear Regulatory Commission under 10 CFR 32.210 or under equivalent regulations of an Agreement State.

Contrary to the above, since 2018, the licensee did not test its sealed sources for leakage and/or contamination at intervals not to exceed six months or at the intervals specified in the certificate of registration issued by the U.S. Nuclear Regulatory Commission under 10 CFR 32.210 or under equivalent regulations of an Agreement State.

- D. License Condition 15 of License 06-35237-01 dated May 28, 2015, requires the licensee shall conduct a physical inventory every six months, or at other intervals approved by the U.S. Nuclear Regulatory Commission, to account for all sources and/or devices received and possessed under the license.

Contrary to the above, since 2018, the licensee did not conduct physical inventories every six months, or at other intervals approved by the U.S. Nuclear Regulatory Commission, to account for all sources and/or devices received and possessed under the license.

This is a Severity Level III problem. (Enforcement Policy Section 6.3)

- E. 10 CFR 30.34(c) requires, in part, that licensees confine possession and use of byproduct material to the locations authorized in the license.

Contrary to the above, from approximately 2019 to April 28, 2021, the licensee failed to confine its possession and use of byproduct material to the locations authorized in the license. Specifically, the licensee stored licensed byproduct material at a storage location in Stratford Connecticut, and that location was not authorized for the storage of licensed byproduct material on the NRC license.

This is a Severity Level III violation (Enforcement Policy Section 6.3)

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance will be (was) achieved, is already adequately addressed on the docket in "Inspection Report No. 03038833/2021001" and in your response. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation, (EA-21-058)," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or in the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days of receipt.

Dated this 8<sup>th</sup> day of November 2021